

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No. 08-128

RECEIVED

MAY - 7 2009

In Regard to the Matter of:

JOEL SCHNEIDER  
U.S. Magistrate Judge

Bayside State Prison  
Litigation

OPINION/REPORT  
OF THE  
SPECIAL MASTER

MONTE WILLIAMS

-vs-

WILLIAM H. FAUVER, et al,

REC.

MAY - 7 .

Defendants.

JOEL SCHNEIDER  
U.S. Magistrate Judge

\* \* \* \* \*  
TUESDAY, APRIL 14, 2009  
\* \* \* \* \*

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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4 Transcript of proceedings in the above  
5 matter taken by Theresa O. Mastroianni, Certified  
6 Court Reporter, license number 30X100085700, and  
7 Notary Public of the State of New Jersey at the  
8 United States District Court House, One Gerry Plaza,  
9 Camden, New Jersey, 08102, commencing at 2:07 PM.  
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1 JUDGE BISSELL: I'm reopening  
2 proceedings in the case of Monte Williams, docket  
3 number 08-1281.

4 This opinion/report is being issued  
5 pursuant to the directives of the Order of Reference  
6 to a Special Master and the Special Master's  
7 Agreement and the guiding principles of law which  
8 underlie this decision to be applied to the facts  
9 upon which it is based as set forth in the jury  
10 instructions in the Walker and Mejias jury charges to  
11 the extent applicable to the allegations of  
12 Mr. Williams.

13 As finalized after review under Local  
14 Civil Rule 52.1, this transcript will constitute the  
15 written report required under paragraph seven of the  
16 Order of Reference to a Special Master.

17 Monte Williams testified that he  
18 arrived in the tents on or about the the 24th of July  
19 of 1997. He testifies to a series of events that  
20 occurred to him, and I'll either quote or summarize  
21 as the case may be the testimony in those instances.

22 Beginning at page nine of the  
23 transcript of his testimony on May 9th, 2008, he  
24 talks about SOGs coming into the tents and beating  
25 him on his legs with night sticks during the first

1 week of August of '97 and that there were repeated  
2 unannounced visits into the tents by SOG officers to  
3 beat inmates for no reasons over a considerable  
4 period of time.

5 For instance, at page 11, line 23 he  
6 says: "Well, what I can remember is on numerous  
7 occasions they would just come unannounced, of  
8 course, and just run into the tents and just start  
9 beating and hitting people. Yelling and screaming,  
10 stuff like that. And that happened a number of  
11 times."

12 He also testified to a second event  
13 occurring to him at page 13. Talks about essentially  
14 a game of private tug-of-war for fun, so to speak.  
15 One officer told him to get up and the other officer  
16 told him to get down. And so that under each  
17 circumstance, as he said, obviously I would be  
18 disobeying one of them. So he would get up and  
19 another officer would say I told you to get down and  
20 would pull him and vice versa. He testified to that  
21 game taking place with him. He also testified to  
22 getting a stiff neck from sitting in the gym on the  
23 day they were there for the search of the tent areas.

24 I find specifically that even if  
25 accepted, that is not actionable. Nothing aggravated

1 or cruel or unusual about requiring the inmates to  
2 sit for that length of time while a search of the  
3 tents was taking place.

4 Then at page 22 he talks of an alleged  
5 encounter on a bathroom break. He said an officer  
6 was taking him to a bathroom break from the tents.  
7 He recounted it as follows:

8 "As we started to walk to the bathroom,  
9 the officer asked for my ID card, which I gave him.  
10 And he told me that I had a lot of nerve coming out  
11 of the tent so close to count time. And that if  
12 anybody else did that, that he was going to have them  
13 defecate or whatever they needed to do on the floor  
14 in their tent, and that I would be responsible for  
15 cleaning it.

16 "We went on to the bathroom and the  
17 officer told me that you have 25 seconds to come out  
18 of there or else I'm going to beat -- and he used  
19 some profanity there.

20 Answer continues.

21 "So I went in and I went as quick as I  
22 could, knowing that after count we would have a  
23 bathroom break and I would be able to finish. So I  
24 went as fast as I could and came out. And the  
25 officer told me, I'm not done with you yet.

1                    "He grabbed my left wrist and the back  
2 of my shirt and shoved me from the top tier of the  
3 stairs. It had been raining. The prison doesn't  
4 allow you to keep your boots or street clothing and  
5 stuff like that."

6                    Talks about having slipped as a result  
7 of being thrown down the stairs and hitting his knee  
8 and elbow on the asphalt.

9                    Then he adds: "And I started to get  
10 up. He told me to stay down there and say a prayer  
11 for the officer that got killed, which I did."

12                    Walking back to the tent he talks about  
13 four other officers coming with a bag of trash and  
14 garbage at which point he was made to tell them, "I  
15 love Bayside," an effort at humiliation, although not  
16 physical conduct.

17                    He identified an Officer McConnell as  
18 having been the perpetrator of this event in the  
19 course of the bathroom break. But Officer McConnell  
20 was called here to testify, and he did so. And,  
21 frankly, McConnell completely refuted that recounting  
22 of what occurred on the occasion of the bathroom  
23 break. He did it with an explanation that is  
24 inherently credible. Namely, that he, himself, was a  
25 brand new probationary officer assigned in this case

1 to a temporary assignment for the purpose of making  
2 this individual escort from the tents into the  
3 bathroom location in back. Particularly under the  
4 level of scrutiny that would be applied to him on  
5 this date, which it seems was on or about August 4th,  
6 the date that Officer Baker was buried, it would make  
7 no sense whatsoever for Officer McConnell, a new  
8 probationary officer on a temporary assignment in an  
9 area where as the record reveals he had no contact  
10 with any of these particular inmates before, to have  
11 taken it upon himself, in the high likelihood that he  
12 would have been seen or otherwise detected, to  
13 mistreat this inmate in this fashion. In short, it  
14 would have ruined his career before it even got  
15 started. So it just doesn't make any inherent sense.

16 In addition, with regard to the  
17 beatings recounted by Mr. Williams concerning his  
18 legs and the attack of the SOG officers in the tents,  
19 despite a detailed answer to interrogatory number  
20 four, this particular type of misconduct against him  
21 is not even mentioned. He did talk about the  
22 bathroom incident, he talked about being pulled up  
23 and down by other officers, he talked about sitting  
24 in the awkward position in the gym, but none of the  
25 supposed repeated beatings on his legs.

1                   Accordingly, I find that he's failed to  
2 sustain his burden of proof with regard to those  
3 beatings because the interrogatory answer is much  
4 closer in time and despite being lengthy in detail  
5 make no mention of it whatsoever.

6                   The events ascribed to the bathroom  
7 break and Officer McConnell are unproven and, in  
8 fact, effectively refuted by the testimony of Officer  
9 McConnell himself. And accordingly, these indeed  
10 cast considerable doubt on the accuracy of his  
11 recounting in terms of being pulled in each direction  
12 by various officers, presumably right in plain view  
13 of others in this so-called get-down-get-up,  
14 get-down-get-up scenario.

15                   Once again, the third incident with  
16 regard to the stiff neck in the gym is not itself  
17 actionable.

18                   Under all the circumstances, I find  
19 that he's failed to sustain his burden of proof with  
20 regard to any of these items based on, in some  
21 instances, a lack of credible evidence, in other  
22 cases the direct refutation of his allegations, and  
23 finally, the impact of the absence of credibility on  
24 certain items upon the other item that he recounted.

25                   So under all of those circumstances, I

1 find that he's failed to sustain his burden of proof  
2 by a preponderance of the evidence of any of the  
3 alleged assaults upon him.

4 Finally, although not every item of  
5 evidence has been discussed in this opinion/report  
6 all evidence presented to the Special Master was  
7 reviewed and considered.

8 For the reasons set forth above, I  
9 recommend in this report that the district court  
10 enter an order and judgment of no cause for action  
11 with regard to Monte Williams.

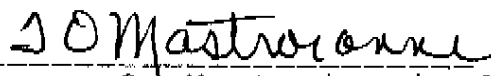
12 (Hearing Adjourned)

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## C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

  
Theresa O. Mastroianni, C.S.R.  
Notary Public, State of New Jersey  
My Commission Expires May 5, 2010  
Certificate No. XI0857  
Date: April 16, 2009